

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Case Management Subcommittee
Hon. Arthur E. Wallace, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
patrick.o'donnell@jud.ca.gov

DATE: October 2, 2003

SUBJECT: *Ex Parte Application for Extension of Time To Serve Pleading
and Order (approve form CM-020) (Action Required)*

Issue Statement

Rule 201.7 of the California Rules of Court, which prescribe the times by which pleadings must be served, allows parties to apply for an extension of time for the service of pleadings. Although there are some local court forms available for litigants to use to request an extension of time, there is no statewide Judicial Council form available for this purpose.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2004, approve the new optional *Ex Parte Application for Extension of Time to Serve Pleading and Orders* (form CM-020) in order to make a Judicial Council form available for this purpose.

Form CM-020 is attached at pages 3–4.

Rationale for Recommendation

Rule 201.7 of the California Rules of Court, which was adopted effective July 1, 2002, governs the time for service of pleadings. This rule contains a provision on the timing and procedure for applying for an extension of time to serve a pleading (Cal Rules of Court, rule 201.7(e).) A proposal has been received for a Judicial Council form for applications to extend time for service. It has been suggested that the approval of such a form would substantially assist litigants, promote uniformity, and assist in implementing the new rule on service of pleadings.

Form CM-020 is designed for use in applying for extensions of time for service of a variety of pleadings, such as complaints, cross-complaints, and answers. It would require the applicant to provide information about any previous continuances that have been ordered or stipulated to. It would also require that all the provisions of rule 379 on ex parte applications be complied with in applying for an extension.

Alternative Actions Considered

It could be left up to the courts to develop local forms for applications for extensions of time or to individual litigants to prepare these. But it seems preferable to have a uniform statewide form available for this purpose.

Comments From Interested Parties

The proposed form was circulated for comment in the Spring of 2003. Eleven public comments were received on the form.¹ The commentators included the State Bar's Committee on Administration of Justice, a local bar association, two presiding judges, a private attorney, two court attorneys, court administrators, and a superior court rules committee. All the commentators except one supported the proposal.

Four commentators suggested specific modifications to improve or clarify the form. The committee agreed with most of these. For instance, the item used to identify previous applications was placed in a separate item 5. The title in the footer was revised to be the same as in the caption. And item 10 was modified to indicate that the applicant could use that space to explain why no notice of the application should be required.

The commentator who disagreed with the form expressed the concern that it is "too labor intensive for a judicial officer." She was concerned that courts would need to add detailed information under "other orders," including provisions for continuing case management conferences. The committee did not regard the form as too burdensome, but, for the convenience of the courts, added a standard, optional order for continuing case management conferences.

Implementation Requirements and Costs

Courts will incur some expenses in making copies of the form available to the public. However, the benefits of having a standard form available for litigants to use in applying for extensions of time should substantially outweigh these costs.

Attachments

¹ A chart summarizing the comments and the committee's responses is attached at pages 5-8.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY	
TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:			
EX PARTE APPLICATION FOR EXTENSION OF TIME TO SERVE PLEADING AND ORDER <input type="checkbox"/> EXTENDING TIME TO SERVE AND <input type="checkbox"/> ORDER CONTINUING CASE MANAGEMENT CONFERENCE		CASE NUMBER:	
APPLICATION		HEARING DATE:	
1. Applicant (name): is <input type="checkbox"/>		DEPT.: TIME:	

APPLICATION

1. Applicant (*name*):

is

- a. ☐ plaintiff
b. ☐ cross-complainant
c. ☐ petitioner
d. ☐ defendant
e. ☐ cross-defendant
f. ☐ respondent
g. ☐ other (*describe*):

2. The complaint or other initial pleading in this action was filed on (date):

3. Applicant requests that the court grant an order extending time for service of the following pleading:

- a. ☐ Complaint
- b. ☐ Cross-complaint
- c. ☐ Petition
- d. ☐ Answer or other responsive pleading
- e. ☐ Other (*describe*):

4. Service of the pleading listed in item 3 is presently required to be completed by (date):

5. Previous applications, orders, or stipulations for an extension of time to serve in this action are:

- a. ☐ None
- b. ☐ The following (*describe all, including the length of any previous extensions*):

6. Applicant requests an extension of time to serve the pleading listed in item 3 on the following parties (*name each*):

CASE NAME:

CASE NUMBER:

7. The pleading has not yet been served on the parties listed in item 6 for the following reasons (*describe the efforts that have been made to serve the pleading and why service has not been completed*):

☐ Continued on Attachment 7.

8. An extension of time to serve the pleading should be granted for the following reasons:

☐ Continued on Attachment 8.

9. If an extension of time is granted, service on the parties listed in item 6 will be completed by (*date*):

10. Notice of this application under rule 379 ☐ has been provided as required (*describe all parties or counsel to whom notice was given; the date, time, and manner of giving notice; what the parties or counsel were told and their responses; and whether opposition is expected*) or ☐ is not required (*state reasons*):

☐ Continued on Attachment 10.

11. Number of pages attached: ____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF APPLICANT OR ATTORNEY FOR APPLICANT)

(SIGNATURE OF APPLICANT OR ATTORNEY FOR APPLICANT)

Order on Application is ☐ below ☐ on a separate document.

ORDER

1. The application for an order extending time to serve the pleading is ☐ granted ☐ denied.
2. The pleading must be served no later than (*date*):
3. ☐ The case management conference is rescheduled to (*date*):
4. Other orders:
5. A copy of this application and order must be served on all parties or their counsel that have appeared in the case.

Date:

JUDICIAL OFFICER

SPR03-18

**Civil Case Management: New Form to Request an Extension of Time to Serve A Pleading
(approve form CM-020)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Grant Barrett General Counsel Superior Court of California, County of Calaveras	A	N	A statewide uniform form is appreciated and may highlight the relatively unknown requirements of rule 201.7.	No response required.
2.	Hon. Ronald L. Bauer Orange Co. Rules and Forms Committee Superior Court of California, County of Orange	AM	Y	<p>The Rules and Forms Committee of the Orange County Superior Court reviewed this item at their meeting of June 12, 2003, and agree with the following comments submitted by Judge Kim G. Dunning, member of the Rules and Forms Committee.</p> <p>1. The item concerning previous applications should have its own number (5.), and following items should be renumbered accordingly.</p> <p>2. The document title should be "Ex Parte Application and Order Extending Time to Serve Pleading" on the bottom of the page (front and back).</p>	<p>The committee agreed with this suggestion.</p> <p>The committee agreed that the title should be changed. It has been redesigned as "Ex Parte Application for Extension of Time To Serve Pleading and Orders."</p>
3.	Committee on the Administration of Justice (CAJ) The State Bar of California San Francisco, California	A	Y	The Committee on the Administration of Justice supports this proposal.	No response required.
4.	Mr. Robert Gerard President Orange County Bar Association	A	Y	Agrees with proposed changes, without specific comments.	No response required.
5.	Richard L. Haeussler Haeussler & Associates	A	N	Agree with proposed changes.	No response required.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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6.	Hon. Suzanne N. Kingsbury Presiding Judge Superior Court of California, County of El Dorado	A	N	Agree with proposed changes.	No response required.
7.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	AM	N	Under item 1, add a box with wording "In the Matter of" for Probate. The footer at the bottom of the form says "Service" Pleading but the top of the form says, "Serve" Pleading. Item 8—Instead of asking for a (date), the party should state the amount of time they are requesting.	Probate is covered under "petitioner" and "other." This mistake has been corrected.
8.	Ms. Sandra Mason Director of Civil Operations	A	N	Agree with proposed changes.	No response required.
9.	Hon. Dennis E. Murray Presiding Judge Superior Court of California, County of Tehama	AM	N	Perhaps a check-the-box could be used so that it indicates when rule 379 notice has not been given and why.	The item has been modified to allow for an explanation why notice has not been given.
10.	Julie Setzer Superior Court of California, County of Sacramento	N	N	The form is too labor intensive for a judicial officer. Sacramento Superior Court requires that parties file a certificate of service acknowledging that all parties were served timely by the 75th day. Parties may seek an extension of time to serve, and courts may make the following orders: Certificate of Service shall be filed no later than: _____ The matter is set for hearing on: ____ at: Apply for order of publication immediately.	The committee disagreed that the form is too labor intensive for judicial officers. It agreed to add a provision regarding continuance of case management conferences, which should reduce the labor involved. The committee agreed generally that a standard provision should be added regarding an order continuing a case management conference, but adopted a

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				<p>Case Management Conference continued to ____ at _____. Case Management Conference set on ____ at _____. A Case Management Statement is due 15 days before the Case Management Conference. A Supplemental Case Management shall be filed on or before ____ (limited civil only).</p> <p>The Judicial Council form would require the judicial officer to mark the Other Orders box and write all of the information above each time a request is received.</p>	<p>different and simpler version than is proposed by the commentator.</p> <p>The committee agreed to add a standard provision ordering the continuance of the case management conference. This should alleviate the necessity for judicial officers to complete the "other orders" provision to include an order continuing the conference.</p>
11.	Ms. Judi Waterman Managing Attorney Superior Court of California, County of Fresno	A	N	<p>It has been suggested by court staff that a line be added in the order section for continuing the case management conference. Extending the time for service often results in the initial case management conference coming before the answer is due, thus requiring a continuance of the case management conference. Fresno's local form contains a continuance line and notes the new date, time, and place of the case management conference. It also requires the plaintiff to notify all other parties. While this verbiage could be written on the proposed form in the "Other orders" area, it would be time-consuming. Adding a line to note a continuance could be a benefit to the user of the form, especially in a heavy caseload situation.</p>	<p>The committee agreed to add an additional line about continuances.</p>

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